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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,934	11/13/2001	Ann M. Nichols	KCC 4729.1 (16,210.1)	8461
321	7590	02/12/2004	EXAMINER	
SENNIGER POWERS LEAVITT AND ROEDEL			FOSTER, JIMMY G	
ONE METROPOLITAN SQUARE			ART UNIT	
16TH FLOOR			PAPER NUMBER	
ST LOUIS, MO 63102			3728	

DATE MAILED: 02/12/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/010,934

Applicant(s)

NICHOLS ET AL.

Examiner

Jimmy G Foster

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15, 17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15, 17 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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1. The allowance of claims 1-18 is withdrawn in view of the following new grounds of rejection.

2. Claims 1-15 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 7, the limitation, "a flexible pocket having a hollow interior" appears to be an indefinite double recitation of the flexible pocket with hollow interior introduced in line 5 of the claim, making unclear how many pockets are being called for by the claim.

The scope of claim 14 is confusing since it calls for the pocket to be sized and shaped for receiving a plurality of absorbent articles "including said article", as if the articles had not already been claimed as structure but intended use, yet claim 14 depends from claim 1 which already structurally calls for the pocket to have a volume that is substantially filled by the plural number of articles.

In addition it is unclear in claim 14 which of the articles already claimed is being referred to by "said article."

Claim 15 constitutes a limitation that is an indefinite double recitation of a limitation already set forth in claim 1.

3. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 10, 11 and 13-15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Joseph et al (6,015,045) in view of published Canadian patent document 2,109,782 to Larose et al (cited by Applicant). The reference of Joseph et al discloses a package for feminine care articles (col. 3, lines 5-6 and lines 42-43). The package includes a pocket (Fig. 1) made of flexible material (col. 3, line 65 through col. 4, line 4), having a hollow interior (again Fig. 1) which contains the articles. The package may be shaped as disclosed by the patent to McLaughlin et al (4,997,613; incorporated by reference in the Joseph et al patent). See the column 5, lines 58-61. The flap of that incorporated reference is substantially rectangular.

The pocket includes an opening/aperture 14 extending into the hollow interior, permitting withdrawal of the articles (co. 3, lines 35-37) from the pocket. The opening 14 is closed by a flap/cover flap 30. The flap includes a open position (Fig. 1) in which the opening 14 is unobstructed by the flap. The flap also includes a closed position (col. 4, lines 62-65) in which the flap covers the opening, which would prevent article removal, as inherent from the size and shape of the flap 30 in comparison to the opening 14 in Figure 1.

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A reclosable/refastenable adhesive closure 50 is provided on the flap for releasably fastening the flap in the closed position (col. 7, lines 50-52 and lines 55-58) over the exterior of the retaining band 44 and therefore over the exterior of the pocket (which includes the exterior of the retaining band). The adhesive may be applied to/positioned on the flap 30 or the retaining band 44 (col. 8, lines 7-8). The adhesive extends the entire width of the flap, as indicated in Figure 7.

The adhesive is inherently spaced from the distal edge of the flap since the flap includes a finger tab 34 which forms a distal edge of the flap (see Fig. 1) and since the tab does not receive the refastenable adhesive (see Fig. 7).

Although it is not explicitly evident from the Joseph et al patent that the package/pocket will be substantially filled with the feminine articles so as to conform to a stack of the articles, the reference of Larose et al, at Figure 1, the superior/upper pocket 30 thereof and the feminine care articles therein, that the pocket is shown to conform to a stack of articles therein, which substantially fill the pocket. It is apparent that filling the pocket would function to efficiently use the volume of the pocket, as evident in Figure 1. Accordingly, it would have been obvious in view of Larose et al to have filled the pocket of Joseph et al with a stack of the feminine articles for the purpose of efficiently using the volume of the pocket for storage of the articles.

The reference of Larose et al also apparently suggests that packaged feminine care articles may be individually wrapped, see Figure 1 (also see the second text page of the specification, heading "BUT DE L'INVENTION").

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Furthermore, beyond the patent of Larose, official notice is taken that it is very well known to individually package feminine care products in an outer package for the known advantages, such as individual protection of the articles, and providing a wrapper that may be used to wrap the product after it is used, for disposal. For these reasons, it would have further been obvious, in view of Larose or in view of it being well known, to have individually wrapped the feminine articles of Joseph et al that are stored in the package.

Regarding claims 2 and 3, to have spaced the adhesive from the distal edge by a particular distance would have been further obvious as discovering a workable range when the general condition is taught in the art (by Joseph et al). See In re Aller, 105 USPQ 233.

5. Claims 1, 4-8 and 13-15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Canadian patent document 2,109,782 to Larose et al in view of Joseph et al (6,015,045). Larose in Figure 1 shows a compartmented package, including a flexible pocket 30,36 having a stack of feminine care articles therein, such that the pocket is filled with the articles. The pocket includes an opening for removal of the articles. Larose also discloses a flap (pointed to by ref. nums. 22,24) for closing the pocket, including a component of a reclosable fastener in the form of a hook-and-loop fastener assembly. The flap includes a straight distal edge.

To any extent that it is not explicitly disclosed by Larose et al that the feminine care articles are individually packaged, it is very well known to individually package feminine care products in an outer package for the

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known advantages, such as individual protection of the articles, and providing a wrapper that may be used to wrap the product after it is used, for disposal. For these reasons, it would have been obvious to have made the feminine care articles of Larose individually wrapped.

Although on page 7, lines 12-13, the Larose et al reference discloses using (uninterrupted) hook-and-loop material ("Velcro") for the flap fastener 60, the reference apparently suggests that any other commonly known attachment device may be used instead (page 7, lines 13-15). Furthermore, the reference of Joseph et al, at column 7, line 55 through column 6, line 6, suggests that hook-and-loop material and refastenable adhesive (e.g. pressure sensitive adhesive) are equivalents in the art for performing the function of reclosably fastening a flap closed on a flexible pocket. The uninterrupted adhesive (50) is shown in Figure 7. Accordingly it would have been obvious, in view of teaching of equivalence by Joseph et al, to have substituted reclosable adhesive for the hook-and-loop fastener assembly 60 of Larose.

Regarding claims 5-7, to have made the adhesive with a particular width would have been further obvious as discovering a workable range when the general condition is taught in the art since Joseph et al teaches an adhesive strip, which would necessarily have a width.

6. Claim 9 is rejected under 35 U.S.C. § 103 as being unpatentable over published Canadian patent document 2,109,782 to Larose et al in view of Joseph et al (6,015,045) as applied to claim 4 above, and further in view of Jones (3,557,853). The reference of Jones at flap 22 and Figure 2 suggests that a flap for a flexible pocket for a feminine care product may be made

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substantially rectangular so that its full height conforms to the width of the package. It is apparent from the fastener means 24,25, that the fastener will be appropriate therewith to be longer across the flap than when a flap is rounded (as with the reference of Larose et al, ref. num. 60). It is further apparent that this would provide a relatively longer flap fastener connection and therefore a sturdier attachment. Accordingly, it would have been obvious in view of Jones to have made the flap of Larose et al rectangular for the purpose of providing a longer flap connection across the pocket.

7. Claim 11 is rejected under 35 U.S.C. § 103 as being unpatentable over Joseph et al (6,015,045) in view of Larose et al (Can. 2,109,782) as applied to claim 1 above, and further in view of McLaughlin et al (4,979,613).

Broadly, a two sided tape is a tape with two sides.

The reference of McLaughlin et al at 14,16 (see Figs 1, 3 and 4) suggests that the reclosable fastener strips on a pocket flap may be in the form of two-sided tapes. These strips use high vinyl static to cause the adhesion. Moreover, the reference of Joseph et al teaches that the reclosable faster may use high static vinyl materials. Accordingly, in view of all of this it would have been obvious to have used a high vinyl two sided tape as the fastener 50.

8. Claim 12 is rejected under 35 U.S.C. § 103 as being unpatentable over Joseph et al (6,015,045) in view of published Canadian patent document 2,109,782 to Larose et al as applied to claim 1 above, and further in view of

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official notice that refastenable hot melt adhesive and its properties are well known. The advantages for hot melt adhesive is that it is applicable with heat and pressure between surfaces that cannot normally be heat sealed together. Accordingly, it would have been obvious in view of this to have made the reclosable fastener as a hot melt adhesive.

9. Claims 17 and 18 are rejected under 35 U.S.C. § 103 as being unpatentable over Joseph et al (6,015,045) in view of published Canadian patent document 2,109,782 to Larose et al as applied to claim 1 above, and further in view of official notice that panty liners and inter-labial pads are known forms of feminine care products having known use. It would have been obvious to have used the package of Joseph et al, as modified by Larose, for storing and carrying any known hygienic/feminine care articles, including the known ones claimed by Applicant (panty liners and inter-labial pads) for providing the same containing and dispensing features for such products that Joseph provides for the feminine care articles disclosed.

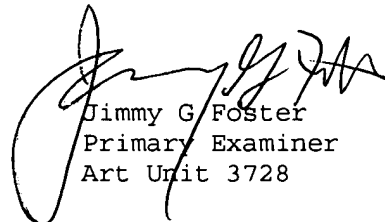
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy G Foster whose telephone number is (703) 308-1505. The examiner can normally be reached on Mon-Fri, 8:45 am - 5:15 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (703) 308-2672. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



Jimmy G Foster
Primary Examiner
Art Unit 3728

JGF
6 February 2004